

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

UNITED CUBAN OIL INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2807

Decision No. CU 4840

Counsel for claimant:

Hastings, Taylor & Willard
Co-Counsel: Herbert Braasch, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$5,733,166.00, was presented by the UNITED CUBAN OIL INC., based upon the loss of oil concessions and properties owned and operated by Cuban subsidiaries of claimant.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Officers of the claimant corporation have submitted evidence to establish that the claimant corporation was organized under the laws of the State of Delaware, and that at all times between the date of loss and presentation of this claim on May 1, 1967, more than 50% of the outstanding capital stock of the claimant business enterprise has been owned by nationals of the United States. The evidence of record, including a statement of a corporate official of claimant, establishes that at all times pertinent to this claim approximately 86 per cent of the outstanding shares of stock of UNITED CUBAN OIL INC. were held by nationals of the United States. The Commission holds that claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claim is based on the asserted value of the Cuban oil lands, mineral rights, easements and other interests therein, drilling equipment, rigs and related property. Claimant has capitalized its investment in acquisition and development of such properties at 2.5 times the asserted value of such properties, said to be \$2,293,266.43, arriving at a figure of \$5,733,166.00.

The evidence of record includes a State Department file with correspondence, letters of incorporation and investigative reports submitted by claimant concerning the wholly-owned subsidiaries of claimant in Cuba which were prepared by credit associations and Dun & Bradstreet. Further, claimant has submitted consolidated balance sheets of the Cuban subsidiaries and the claimant corporation for the year ending September 30, 1959, data concerning

the ownership and development of 38 oil concessions in Cuba, inventories of drilling equipment, correspondence, Prospectuses, an Annual Report dated September 30, 1959, analysis reports concerning the Cuban oil properties, contracts, data concerning Cuban Law No. 635 dated November 20, 1959, formation of a cooperative known as Primera Cooperativa Petrolera de Cuba in 1960, as well as Statements of Claim, newspaper clippings and excerpts from industrial manuals.

The claimant was organized under the laws of Delaware on January 9, 1956, to exploit oil and gas concessions owned by Cuban corporations on the north shore of the Havana Province of Cuba. The evidence establishes that at all times pertinent to this claim the claimant corporation had authorized 10,000,000 shares of common stock at \$0.10 par value and that 3,844,880 shares were outstanding which were held by 3,350 stockholders. At the time of loss the claimant's assets were primarily located in Cuba, although the record indicates that from 1958 to 1960 the claimant acquired ownership interests in oil concessions in various areas of the United States.

The primary developmental activities of claimant in the Cuban oil industry were conducted through the operations of subsidiaries organized in Cuba in 1954 and later, including Empresas Petroleras Jones de Cuba, S.A., which operated the equipment and oil concessions in Cuba; Compania Perforadora Jones de Cuba, S.A. whose operations pertained to the office personnel, labor, machinery and concessions; while Compania de Fomento Petrolero Ted Jones, S.A., a subsidiary of Empresas Petroleras Jones de Cuba, S.A. and inactive since 1957, was organized primarily to raise capital for drilling purposes. Claimant also owned 34 per cent of Refineria de Petroleo Santa Maria, S.A., through Empresas.

The evidence of record establishes that the claimant's Cuban holdings include concessions on 129,190 acres, with 25,310 off-shore, on the "north shore" of Cuba, near Havana, and 2 per cent overriding royalty in interest in 300,610 unproven acres owned by the Cuban American Drilling & Exploration Company. In 1957 the claimant also reacquired interests formerly held in the Thomas Bess and Quadreny Primero concessions on termination of drilling

agreements with the Cuban Kewanee Oil Company. In 1958 a "farm out" agreement was concluded with Quadreny Drilling Company of Cuba for development of claimant's Don Juan concession near Havana harbor. In January 1960, claimant had 8 oil wells and 1 gas (shut-in) well on Cuban leases and the aforesaid 34 per cent of the refinery near Havana, Cuba.

The rights of claimant in the properties which it controlled through Cuban subsidiaries were affected by the Cuban Government under Law 635 of November 23, 1959. This law cancelled all applications for exploration and exploitation of concessions, regardless of the status thereof. While claimant filed applications for further drilling operations none of the applications were approved. Accordingly, even though claimant transferred concessions and other valuable property rights to a cooperative, as discussed hereafter, during March 1960, the Commission finds that the rights of claimant with respect to the property which it controlled through Cuban subsidiaries were effectively taken by the Government of Cuba on November 23, 1959. (See Claim of Felix Heyman, Claim No. CU-0412, 1968 FCSC Ann. Rep. 51.)

In March 1960 claimant transferred all Cuban concessions, equipment and property rights to a cooperative for the consideration of \$300,000.00, to be paid in the income from oil production. This transfer to the cooperative, known as Primera Cooperativa Petrolera de Cuba, not connected with the Instituto Cubano del Petrolero, an agency of the Cuban Government, was effected after the passage of Law 635, dated November 20, 1959. The cooperative was formed by a group of Cuban laborers to carry forward the exploitation of the subject concessions formerly held by claimant through Cuban subsidiaries. While claimant withheld certain rights with respect to two concessions their activities, as well as those of the cooperative, had been effectively curtailed and taken by the provisions and enforcement of Law 635 by Cuban officials.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of

valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The question in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant has also submitted a consolidated balance sheet with its September 1959 Annual Report, showing assets and liabilities, with explanatory notes. These statements apparently include not only the assets and liabilities of the Cuban subsidiaries which are the subject of this claim but also data pertaining to properties or rights to property within the United States which would not, at any time, be subject to nationalization or other taking by the Government of Cuba.

However, the record includes a report prepared by the Cuban accounting firm of Salas y Gutierrez Gamoneda dated November 27, 1959, which is a combined balance sheet, as of September 30, 1959, for Empresas Petroleras Jones de Cuba, S.A., Compania de Fomento Petrolero Ted Jones, S.A. and Compania Perforadora Jones de Cuba, S.A. This report reflects the assets and liabilities of these subsidiaries immediately prior to the effective date of Law 635; and the Commission finds that this financial data more appropriately establishes the net worth of claimant's Cuban subsidiaries at the time of loss. It reflects the following, the peso being on a par with the United States dollar:

ASSETS

CURRENT ASSETS:

Cash on hand and in banks	\$ 783.30
Advances to Ted Jones Drilling Company for purchases of equipment	40,043.85
Receivables less \$18,030.03 of notes discounted	22,742.99
Materials and supplies	<u>55,743.85</u>

Total Current Assets \$119,313.99

INVESTMENT - at cost 7,500.00

FIXED ASSETS:

Interests in Cuban oil concessions less reserve for amortization of \$3,346.08	\$ 34,985.54
Drilling equipment, trucks, etc., at cost less accumulated depreciation of \$176,144.50 (including equipment acquired from Ted Jones for 134,000 shares of Empresas capital stock and recorded at transferor's cost of \$11,655.46 - U. S. Dollars stated at par with Cuban Pesos)	58,844.20
Equipment costs of wells less reserves for amortization \$57,172.35	167,837.81
Intangible drilling costs less reserves for amortization of \$88,848.37	<u>422,654.34</u>

Total Fixed Assets 684,321.89

DEFERRED CHARGES AND OTHER ASSETS:

Organization expenses less amortization	\$ 3,514.94
Prepaid insurance, deposits, etc.	<u>7,016.88</u>

Total Deferred Charges and Other Assets 10,531.82

Total Assets \$821,667.70

LIABILITIES AND CAPITAL

CURRENT LIABILITIES:

Bank overdraft	\$ 421.90
Notes and accounts payable	25,447.97
Accrued taxes and insurance	<u>4.55</u>
	\$ 25,874.42

ADVANCES PAYABLE:

United Cuban Oil Inc.	<u>448,727.78</u>
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Total Liabilities \$474,602.20

CAPITAL STOCK AND SURPLUS:

Capital stock:

Empresas Petroleras Jones
de Cuba, S.A.

Authorized 250,000 shares,
\$1.00 par value each

Issued and outstanding -
243,000 shares \$159,694.91

Compania de Fcmento Petrolero
Ted Jones, S.A.

Authorized 10,000,000 shares,
\$0.50 par value each

Issued and outstanding -
3,008,570 shares 302,310.65

Compania Perforadora Jones
de Cuba, S.A.

Authorized 100,000 shares,
\$1.00 par value each

Issued and outstanding -
1,000 shares 1,000.00 \$463,005.56

Earned surplus (deficit):

Balance, October 1, 1958 (\$ 14,998.94)

(Add) or deduct - Net loss
for the year ended
September 30, 1959 (100,941.12)

Balance, September 30, 1959 (115,940.06)

Total Capital Stock and Surplus 347,065.50

Total Liabilities and Capital \$821,667.70

With respect to the fixed asset included as intangible drilling costs, less reserves for amortization, data in explanation of the nature of items included in the aforesaid balance sheet indicates that such costs are being amortized on the basis of the estimated oil reserves of the leases where the wells are located; and, as stated above, that at the time of loss the claimant's concessions include 129,190 acres with 8 oil wells and 1 gas well as well as an overriding royalty interest in 300,610 unproven acres owned by Cuban American Drilling & Exploration Company.

Thus, the Commission finds that the total assets of the Cuban subsidiaries were \$821,667.70; that the total liabilities were in the amount of \$474,602.20; and that the net worth of the Cuban subsidiaries at the time of loss was \$347,065.50.

The aforesaid liabilities include "Advances Payable" by the subsidiaries to claimant in the total amount of \$448,727.78. Accordingly, the Commission finds that claimant also suffered a loss in this amount within the scope of Title V of the Act as a result of the taking of the Cuban corporations by the Government of Cuba. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

The Commission concludes that claimant suffered a loss in the total amount of \$795,793.28, within the meaning of Title V of the Act, as a result of the taking by the Government of Cuba of the properties of claimant's wholly-owned subsidiaries in Cuba on November 23, 1959.


The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that UNITED CUBAN OIL INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seven Hundred Ninety-five Thousand Seven Hundred Ninety-three Dollars and Twenty-eight Cents (\$795,793.28) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAY 13 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(c) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)